



CITY COUNCIL

CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE 08 - 31
BILL 41 (2008)

A BILL FOR AN ORDINANCE

TO REZONE LANDS SITUATED AT KAPOLEI, EWA, O'AHU, HAWAII.

BE IT ORDAINED by the People of the City and County of Honolulu:

SECTION 1. Land situated at Kapolei, Ewa, O'ahu, Hawai'i, hereinafter described, is hereby rezoned from AG-1 Restricted Agricultural District to A-2 Medium Density Apartment District with 90-foot height limit. The boundaries of said District shall be described as shown on the map attached hereto, marked "Exhibit A" and made a part hereof, and further identified as Tax Map Key: 9-1-017: Portion 071.

SECTION 2. A Unilateral Agreement marked "Exhibit B" is by reference incorporated herein and made a part hereof.

DPP07Z-8.B08

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CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE 08-31
BILL 41 (2008)

A BILL FOR AN ORDINANCE

SECTION 3. This ordinance shall take effect upon its approval.

INTRODUCED BY:

Robert Masullo (br)

DATE OF INTRODUCTION:

MAY 20 2008

Honolulu, Hawaii

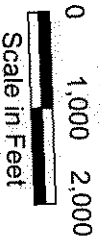
Councilmembers

APPROVED AS TO FORM AND LEGALITY:

Doyle S. Kuterdy
Deputy Corporation Counsel


APPROVED this 21st day of November, 20 08.

Mufi Hannemann
MUFU HANNEMANN, Mayor
City and County of Honolulu



APPLICANT: THE SALVATION ARMY
TAX MAP KEY(S): 9-1-017: Por. 071
FOLDER NO.: 2007/Z-8
LAND AREA: Approx. 15.000 Acs.
PREPARED BY: DEPARTMENT OF PLANNING & PERMITTING
CITY AND COUNTY OF HONOLULU




 PUBLIC HEARING
 PLANNING COMMISSION
 CITY COUNCIL
 JUL 23 '08 2007/7-24
 ORD. NO. 08-31 APR 30 2008
 EFF. DATE: NOV 21 2008 EXHIBIT A BILL 41 (2008)

I hereby certify that this is
a true copy from the records
of the Bureau of Conveyances,
as

Susan M. Cummings
Registrar of Conveyances
Assistant Registrar, Land Court
State of Hawaii

Doc 3804773
CTN 908,339
NOV 10, 2008 12:00 PM

LAND COURT SYSTEM

REGULAR SYSTEM

Return by Mail ☒ Pickup ☐ To:

The Salvation Army, a California Corporation
Hawaii and Pacific Island Division

Mailing Address:
P.O. Box 22646
Long Beach, California 90802

Physical Address:
180 East Ocean Boulevard
Long Beach, California 90802

Telephone: (562)436-7000

TITLE OF DOCUMENT:

**UNILATERAL AGREEMENT AND DECLARATION
FOR CONDITIONAL ZONING**

PARTIES TO DOCUMENT:

DECLARANT: THE SALVATION ARMY, a California Corporation

FEE OWNER: STATE OF HAWAII, Board of Land and Natural Resources

TAX MAP KEY(S): Tax Map Key (1) 9-1-017: 071 (por)

Certificate of Title No. 908,339

(This document consists of 10 pages)

UNILATERAL AGREEMENT AND DECLARATION FOR CONDITIONAL ZONING

THIS INDENTURE (hereinafter referred to as this "Unilateral Agreement" or this "Declaration"), made this 6th day of November, 2008, by The Salvation Army, a California corporation (hereinafter referred to as ("Declarant"), whose post office address is P.O. Box 22646, Long Beach, California 90802, and whose place of business is 180 East Ocean Boulevard, Long Beach, California 90802, and State of Hawaii, by its Board of Land and Natural Resources ("Fee Owner"), whose address is 1151 Punchbowl Street, Honolulu, Hawaii, 96813.

WITNESSETH:

WHEREAS, the Fee Owner is the owner in fee simple of that certain parcel of land ("Parcel") situated in Kapolei, consisting of approximately 15 acres, described as Tax Map Key No. (1) 9-1-017: 071 (por), and more particularly described in Exhibit A attached hereto and made part hereof; and

WHEREAS, the Declarant has entered into an agreement with the Fee Owner to purchase the Parcel, as described in an agreement dated May 7, 2008; and

WHEREAS, the Declarant plans to develop a community center on the Parcel (the "Project"); and

WHEREAS, the Declarant and the Fee Owner desire to make the Parcel subject to this Unilateral Agreement; and

WHEREAS, the City Council (the "Council") of the City and County of Honolulu (the "City"), pursuant to the provisions of the Land Use Ordinance ("LUO"), Revised Ordinances of Honolulu 1990 ("ROH") Section 21-2.80, as amended, relating to conditional zoning, is considering a change in zoning under the LUO of the Parcel from AG-1 Restricted Agricultural District to A-2 Medium Density Apartment District with a 90-foot height limit, (the "zone change"); and

WHEREAS, a public hearing regarding the change in zoning, Bill 41 (2008), was held by the Council on July 23, 2008; and

WHEREAS, the Council recommended by its Zoning Committee Report No. 313 that the said zone change be approved, subject to the following conditions contained in this Declaration to be made pursuant to the provisions of ROH Section 21-2.80, as amended, relating to conditional zoning, and to become effective on the effective date of the zoning ordinance approving the change of zoning (the "Rezoning Ordinance");

NOW THEREFORE, the Declarant and the Fee Owner hereby covenant and declare as follows:

1. Affordable Housing Program. Prior to residential subdivision approval, or residential building permit approval, whichever comes first, Declarant shall execute an agreement to participate in an affordable housing plan acceptable to the Department of Planning and Permitting (DPP) in accordance with adopted rules. The agreement shall provide for no less than 30 percent (30%) of the total residential units in the Project as a whole to be affordable housing units. Of the 30 percent (30%) affordable housing units required, 20 percent (20%) shall be affordable for those households earning more than 80 percent (80%) but no more than 120 percent (120%) of the median income. The remaining 10 percent (10%) must be affordable to households earning no more than 80 percent (80%) of the median income. This requirement shall not apply to overnight accommodations approved as part of a meeting facility as defined in the LUO.
2. Endangered/Threatened Species. Prior to subdivision approval, or building permit approval, whichever comes first, Declarant shall obtain a Certificate of Inclusion from the Division of Forestry and Wildlife (DOFAW) to allow DOFAW to physically remove and relocate any endangered plants that may be present on the subject site. Prior to building permit approval, Declarant shall also notify DOFAW regarding the latitude and longitude coordinates where construction will occur and, if any endangered plants are affected, these plants shall be relocated to the Contingency Reserve Area.
3. Non-Potable Water System. The Declarant shall be required to connect to the 215-foot non-potable water system when the non-potable irrigation system is installed along the North-South Road corridor, as required by the Board of Water Supply (BWS).
4. Regional Drainage. The Declarant shall, prior to subdivision approval or building permit approval, whichever occurs first, submit to and obtain approval by the DPP and the State Department of Transportation (DOT) of a drainage master plan. The plan shall include maintenance of the current 2,500 cubic feet per second drainage flow limit, until released from this requirement by the DPP. The Declarant shall comply with the drainage master plan.
5. Transportation.
 - a. The Declarant shall submit and obtain, prior to the issuance of a temporary and/or permanent certificate of occupancy, approval by the DPP, the Department of Transportation Services (DTS) and the DOT for the following:
 - 1) A detailed Traffic Management Plan (TMP). The TMP should be updated every two (2) years until build-out to identify, in detail, traffic demand management (TDM) strategies to minimize the

amount of vehicles being generated by the site, especially during the peak periods of traffic.

- 2) A parking management plan that specifically identifies where overflow parking will be provided and, during large events, how parking will be managed.

The Declarant shall comply with the TMP and the parking management plan, as approved.

- b. The Declarant, prior to submittal of building permit applications, shall obtain approval by DPP for the following:
 - 1) Vehicular access locations that have been coordinated with the adjacent properties, in particular the Department of Education (DOE), to assure compatibility with all driveway locations.
 - 2) Multiple pedestrian access points to the site that are designed at locations which will limit the amount of mid-block crossings.
 - 3) Connectivity to the planned middle school, nearby parks and family housing areas.
6. Educational Facilities. Prior to residential subdivision approval, or building permit for residential use, whichever comes first, Declarant shall enter into an agreement with the State Department of Education (DOE) regarding the Declarant's contribution to the development, funding and/or construction of public schools and submit a copy to the DPP.
7. Disclosures. The Declarant shall disclose to all prospective occupants, buyers, lessees, and developers regarding the land being subject to noise from aircraft and Kalaeloa Airport and Honolulu International Airport operations. Language of the disclosure document shall be reviewed and approved by the DOT prior to execution of sales or lease documents.
8. Compliance with Other Governmental Requirements. The Declarant shall be responsible for ensuring that the final plans for the Project comply with all applicable Land Use Ordinance (LUO) and other governmental agencies' provisions and requirements.
9. Annual Reports. On an annual basis, the Declarant shall submit a written status report to the DPP documenting its satisfaction of and/or describing its progress toward complying with each condition of approval for this zone change. The status report shall be submitted to the DPP by December 31 of each year until such time as the DPP has determined that all conditions of approval have been satisfied. If a status report is not submitted within the time specified, the DPP may defer the processing of permits until a status report is submitted.

10. Noncompliance with Any Conditions. In the event of noncompliance with any of the conditions set forth herein, the Director of Planning and Permitting shall inform the Council and may seek civil enforcement or take appropriate action to terminate or stop the Project until applicable conditions are met, including but not limited to revoking any permits issued under this zoning and withholding issuance of other permits related to the Project. Noncompliance also may be grounds for the enactment of ordinances making further zone changes, including revocation of the underlying zoning, upon initiation by the proper parties in accordance with the Revised City Charter.

NOW, THEREFORE, the Declarant and the Fee Owner hereby make the following additional Declarations:

This Declaration is made pursuant to the provisions of Section 21-2.80 of the LUO relating to conditional zoning. This Declaration shall become fully effective on the effective date of the rezoning ordinance.

As used herein, references to a specific City department or agency shall be deemed to include a reference to any successor department or agency.

That the conditions imposed herein are reasonably conceived to fulfill public service demands created by the requested change in zoning and are rationally related to the objective of preserving the public health, safety and general welfare and the further implementation of the General Plan of the City and County of Honolulu.

That the development of the Parcel shall conform to the aforesaid conditions with the understanding that, at the request of the Declarant and upon the satisfaction of the conditions set forth in this Unilateral Agreement, the Department of Planning and Permitting may fully or partially release, as applicable, any of the foregoing conditions that have been fulfilled.

That if there are any conflicts between this Unilateral Agreement and any previous unilateral agreement(s) applicable to the Parcel, the terms and conditions of this Unilateral Agreement shall apply.

AND IT IS EXPRESSLY UNDERSTOOD AND AGREED that the conditions imposed in this Declaration shall run with the Parcel and shall bind and constitute notice to all the parties hereto and subsequent lessees, grantees, assignees, mortgagees, lienors, successors, and any other persons who have or claim to have an interest in the Parcel, and the City and County of Honolulu shall have the right to enforce this Declaration by rezoning, appropriate action at law or suit in equity against all such persons, provided that the Declarant or its successors and assigns may file a petition with the Department of Planning and Permitting for amendment or removal of any conditions or termination of this Declaration, such petition to be processed in the same manner as petitions for zone changes.


AND Fee Owner hereby consents to and joins in this Unilateral Agreement and agrees that the Land shall hereafter be subject to the covenants and conditions contained herein.

This Unilateral Agreement may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same Unilateral Agreement, binding upon all of the parties hereto, notwithstanding that all of the parties are not signatory to the original or the same counterparts. For all purposes, duplicate unexecuted pages of the counterparts may be discarded and the remaining pages assembled as one document.

IN WITNESS WHEREOF, the parties hereto have executed this Unilateral Agreement and Declaration for Conditional Zoning on the day and year first above written.


THE SALVATION ARMY
A CALIFORNIA CORPORATION

By



William Harfoot
Its Vice President

and



Robert S. Lloyd
Its Assistant Secretary

Declarant

THE STATE OF HAWAII
BOARD OF LAND AND NATURAL
RESOURCES

By

Laura H. Thielen
Its Chairperson

Fee Owner

AND Fee Owner hereby consents to and joins in this Unilateral Agreement and agrees that the Land shall hereafter be subject to the covenants and conditions contained herein.

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THE SALVATION ARMY
A CALIFORNIA CORPORATION

By

Its _____


and

Its _____

Declarant

THE STATE OF HAWAII
BOARD OF LAND AND NATURAL
RESOURCES

By



Laura H. Thielen

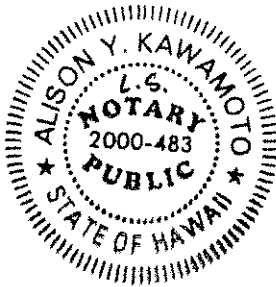
Its Chairperson

Fee Owner

STATE OF HAWAII)
)
 CITY AND COUNTY OF HONOLULU) ss.

On this 6 day of November, 2008, before me personally appeared LAURA H. THIELEN, to me personally known, who, being by me duly sworn, did say that she is the Chairperson of the Department of Land and Natural Resources of the STATE OF HAWAII; that the seal affixed to the foregoing instrument is the seal of said STATE OF HAWAII; and that said instrument was signed and sealed on behalf of said STATE OF HAWAII and said Chairperson acknowledged said instrument to be the free act and deed of said STATE OF HAWAII.

This 6 page UNILATERAL AGREEMENT AND DECLARATION FOR CONDITIONAL ZONING, dated —, 2008, was subscribed and sworn to before me this 6 day of November, 2008, in the First Circuit of the State of Hawaii, by LAURA H. THIELEN, Chairperson of the Department of Land and Natural Resources of the STATE OF HAWAII.



Alison Y. Kawamoto

Notary Public, State of Hawaii

Name: Alison Y. Kawamoto

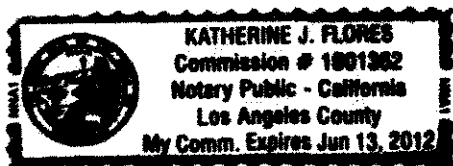
My commission expires: 10/1/2012

Doc. Date: — # Pages: 6
 Name: Alison Kawamoto 1 Circuit
 Doc. Description: Unilateral agreement
& Declaration for Conditional zoning
Alison Y. Kawamoto 11/6/08
 Signature Date

NOTARY CERTIFICATION

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Los AngelesOn Nov. 5, 2008 before me, Katherine J. Flores, Notary Public
Date Here Insert Name and Title of the Officerpersonally appeared William Harfoot and Robert Lloyd
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

**RIGHT THUMBPRINT
OF SIGNER**
Top of thumb here

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

**RIGHT THUMBPRINT
OF SIGNER**
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EXHIBIT A

All of that certain parcel of land being the whole of Lot 18061, as shown on Map 1410, filed with Land Court Application No. 1069, being a portion of the lands described in Transfer Certificate of Title No. 908,339 issued to the State of Hawaii.

Together with the following:

Lot 18061 shall have access over Lot 18066 and Easement 9669, as shown on said Map 1410, to Lot 17853, as shown on Map 1375 of Land Court Application No. 1069, and then over Easement 4770, as shown on Map 712 of Land Court Application No. 1069, affecting Lot 10067-B, as shown on Map 876 of Land Court Application No. 1069, to Farrington Highway, a public road.

END OF EXHIBIT A

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII
CERTIFICATE

ORDINANCE 08-31

BILL 41 (2008)

Introduced: 05/20/08 By: BARBARA MARSHALL (BR)

Committee: ZONING

Title: A BILL FOR AN ORDINANCE TO REZONE LANDS SITUATED AT KAPOLEI, EWA, OAHU, HAWAII.

Links: [BILL 41 \(2008\)](#)

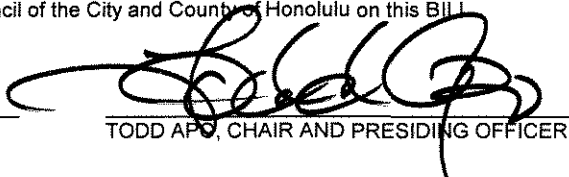
[CR-196](#)

[CR-218](#)

COUNCIL	06/04/08	BILL PASSED FIRST READING AND REFERRED TO THE COMMITTEE ON ZONING.			
	APO Y	CACHOLA Y	DELA CRUZ Y	DJOU Y	GARCIA Y
	KOBAYASHI Y	MARSHALL Y	OKINO Y	TAM Y	
ZONING	06/24/08	CR-196 - BILL REPORTED OUT OF COMMITTEE FOR PASSAGE ON SECOND READING AND SCHEDULING OF A PUBLIC HEARING. (Current deadline for Council action : 08/17/08)			
PUBLISH	07/12/08	PUBLIC HEARING NOTICE PUBLISHED IN THE HONOLULU STAR BULLETIN.			
COUNCIL/PUBLIC HEARING	07/23/08	CR-196 ADOPTED. BILL PASSED SECOND READING, PUBLIC HEARING CLOSED AND REFERRED TO ZONING COMMITTEE.			
	APO Y	CACHOLA Y	DELA CRUZ Y	DJOU Y	GARCIA Y
	KOBAYASHI Y	MARSHALL Y	OKINO Y	TAM Y	
ZONING	7/29/08	CR-218 - 120-DAY EXTENSION OF TIME BEING REQUESTED. (CURRENT DEADLINE FOR COUNCIL ACTION 8/17/08.)			
PUBLISH	07/30/08	SECOND READING NOTICE PUBLISHED IN THE HONOLULU STAR BULLETIN.			
SPECIAL COUNCIL	08/06/08	CR-218 ADOPTED. 120-DAY EXTENSION OF TIME GRANTED (DEADLINE: 12/15/08.)			
	APO Y	CACHOLA Y	DELA CRUZ A	DJOU Y	GARCIA Y
	KOBAYASHI Y	MARSHALL Y	OKINO Y	TAM Y	
ZONING	10/28/08	CR-313 - BILL REPORTED OUT OF COMMITTEE FOR PASSAGE ON THIRD READING.			
COUNCIL	11/12/08	CR-313 ADOPTED AND BILL 41 (2008) PASSED THIRD READING.			
	APO Y	CACHOLA Y	DELA CRUZ Y	DJOU Y	GARCIA Y
	KOBAYASHI Y	MARSHALL E	OKINO Y	TAM Y	

I hereby certify that the above is a true record of action by the Council of the City and County of Honolulu on this Bill.


DENISE C. DE COSTA, CITY CLERK


TODD APO, CHAIR AND PRESIDING OFFICER